EXECUTIVE OFFICER'S SUMMARY REPORT 8:30 A.M., AUGUST 27, 2003 REGIONAL WATER QUALITY CONTROL BOARD 5550 SKYLANE BLVD., SUITE A SANTA ROSA, CALIFORNIA

Mark Neely

ITEM: 16

SUBJECT: Status Report on Work Efforts in Five Humboldt County Watersheds: Elk River,

Freshwater Creek, Jordan Creek, Bear Creek, and Stitz Creek

DISCUSSION

Status of Waste Discharge Requirements

Field staff have been inspecting the sites designated under the Waste Discharge Requirements Order No. R1-2003-0007 and Order No. R1-2003-0027 (WDRs) to determine compliance with the terms of the Orders. The monitoring sites (primarily stream crossings) associated with the WDRs and the Monitoring and Reporting Program were agreed upon by Regional Water Board staff and Pacific Lumber following our joint fieldwork. Staff performed the fieldwork primarily to assess compliance and the effectiveness of the prescribed erosion control measures.

During the months of May and June, staff inspected a total of six sites in the Elk River watershed. Four of the six sites inspected in the Elk River watershed were identified by Pacific Lumber's Monitoring and Reporting Program (MRP) report. Of those four sites identified and inspected, three pose a risk to water quality and need further remediation work. The fourth site is a road construction spoil pile that has been properly treated. The fifth and sixth sites in the Elk River watershed were discovered by Regional Water Board staff. One does not pose a significant risk to water quality but should have been identified and described in Pacific Lumber's MRP. The last site is a degraded road segment that staff was aware of, and the inspection was conducted to document the condition of the road and the risk to water quality. The road is a chronic source of sediment and staff will be working with Pacific Lumber to correct the problem. All information has been provided to Pacific Lumber.

During the months of May and June, staff inspected three sites in the Freshwater Creek Watershed. Pacific Lumber's MRP reports identified one of the three sites. Site 1 has been treated by Pacific Lumber and does not pose a risk to water quality at this time. Sites 2 and 3 are THPs that had been previously identified by staff as potential problem areas. The roads and watercourse crossings were inspected to ensure they were functioning properly. Several points were identified at Sites 2 and 3 for corrective action.

Reports Of Waste Discharge for Timber Harvest Operations Pursuant To the Basin Plan

Pacific Lumber submitted a Report of Waste Discharge (ROWD) on July 1, 2003 for all plans in Elk River and Freshwater Creek. The ROWD is for discharges and threatened discharges associated with any and all timber operations proposed to be conducted in the Elk River and Freshwater Creek watersheds between October 15, 2003 and May 1, 2004. Staff sent a letter notifying Pacific Lumber of some deficiencies.

This requirement to file a ROWD for timber operations will not extend to emergency abatement activities, habitat restoration work, administrative access for monitoring and similar activities, or activities required or directed by federal or state agencies to mitigate environmental impacts from past operations. Our staff is in the process of identifying potential monitoring points associated with Pacific Lumber plans in the two watersheds. The Waste Discharge Requirements and Monitoring and Reporting Programs will be amended before October 15, 2003.

Status of Cleanup and Abatement Order No. No. 98-100

On July 18, staff, along with legal counsel, met with Pacific Lumber, their legal counsel, consultant, and some residents of North Fork Elk River to discuss progress in compliance with Cleanup and Abatement Order No. 98-100. This is the Order that required Pacific Lumber to supply alternative drinking water supplies to the residents. Pacific Lumber's consultant, SHN Engineers, is continuing working out small items that remain to be addressed. These items comprise a "punch list". The systems are in and functioning for most residents, but each presents a unique situation with specific issues to be addressed. We have agreed to weekly phone calls with SHN to keep abreast of their progress.

Some of the outstanding issues include equipment needs for specific systems, river intakes versus well installation, water supply infrastructure, river access problems, training needs, operation and maintenance, and water quality monitoring. Pacific Lumber will consider doing limited testing for pesticides to alleviate resident concerns. However, the Order requires the water to meet Title 22 standards, which the water supplies have met.

Long-term maintenance remains an issue to be resolved. Pacific Lumber believes that they have no responsibility for paying for the long-term maintenance of the new systems. This is because there would have been an ongoing cost of maintaining the resident's original existing systems; that the previous systems were typically substandard and many would not have meet the drinking water standards; and that the new systems have substantially increased their property values. However, Cleanup and Abatement Order No. 98-100 states: "...the discharger shall abate the effects of their increased sediment discharges to the North Fork Elk River and its tributaries on downstream surface water users. The abatement activities may include any alternatives that provide substantially the same water quality and quantity as was historically (prior to 1993) available for domestic and agricultural uses, at approximately the same cost of delivery and treatment of surface waters. The above abatement activities shall restore the historic and existing and potential beneficial uses of the NF Elk River and shall continue until the effects of sediment discharged decline to historic levels."

To this effect, staff has interpreted that Pacific Lumber is responsible for the difference between the original cost of treatment and the new cost of treatment until the river has been restored to pre-1993 conditions. It will need to be determined what standard we will use to determine when the pre-1993 conditions are met. Perhaps we can utilize information generated by our TMDL efforts. We will continue to meet with Pacific Lumber, monitor the progress of their efforts, and work towards agreement on the remaining issues.

Status of Cleanup and Abatement Order No. No. R1-2002-0114

On December 17, 2002, the Regional Water Board issued Cleanup and Abatement Order and Request for Technical Reports No. R1-2002-0114 for the North and South Forks of the Elk River. This followed the rescission of, and revisions to, an earlier order (No. R1–2002-0085) to reflect five administrative changes including a due date from October 4, 2002 to December 31,

2002. During the months of May and June, staff inspected five sites in the Elk River watershed that were reported as repaired. Site 1 has been treated by Pacific Lumber and does not pose a risk to water quality at this time. Sites 2 and 3 are THPs that had been previously identified by staff as potential problem areas. The roads and watercourse crossings were inspected to ensure they were functioning properly. Several points were identified at Sites 2 and 3 for corrective action. The other sites did not appear to be a problem at this time.

Pacific Lumber's response to Order No. R1-2002-0114 was incomplete, and staff has continued to meet the Pacific Lumber and discuss the deficiencies. Particular attention has been paid to the Elk River CAO, as Pacific Lumber's response to the Order was to serve as a template for the other four watersheds. There has been some difficulty getting the required information from Pacific Lumber, partially due to problems with their early data storage efforts. Consequently, finalizing the Elk River CAO and starting the same process for the other watersheds was delayed. Regional Water Board and Pacific Lumber staff last met on July 24 as the Technical Coordinating Committee. Staff agreed to begin the process of addressing the impacts in the other four watersheds by issuing or re-issuing a request for technical reports for restoration of the watersheds.

Other Activities

Staff have been primarily administering the WDRs and cleanup and abatement orders (CAOs), while trying to maintain a presence on preharvest inspections, review teams, and other day to day activities. Should staff encounter proposed THPs that pose a significant risk to water quality degradation, the Executive Officer will review the waiver of a report of waste discharge as provided under the Interim Waiver adopted by the Regional Water Board in December 2002.

Meetings with Pacific Lumber

We have continued to take the actions detailed in the time schedule related to Freshwater Creek and the other watersheds. Specifically, Regional Water Board staff and Pacific Lumber staff met at their offices on March 20, 2003. One item discussed during the meeting was the Freshwater Creek Watershed Technical Coordinating Meeting. Also discussed were the Elk River CAO, TMDL monitoring, WDR Implementations, including hillslope inspection frequency and monitoring sites in the Elk River and Freshwater Creek watersheds. We held another meeting in our office, on July 23, 2003, to review the status of Pacific Lumber's response to the various enforcement actions.

Response to Board motions on the Five Watersheds

One of the five resolutions adopted by this Board at the January 23-24 meeting was the following:

"Staff to use the HCP as a mechanism for implementing some of the Regional Water Board's requirements on water quality and be more collaborative with Mr. Blum of NOAA Fisheries, and have staff report back to the Regional Water Board on any progress that might be made there. Suggested that perhaps the staff would not only seek the assistance of NOAA Fisheries, but other signatory agencies of the HCP to see were we can find common ground and assistance."

On April 24th, Regional Water Board staff met with representatives of NOAA Fisheries, Fish & Game, US Fish & Wildlife, CDF, and CGS in the Regional Water Board offices. Topics of discussion included: potential areas of Regional Water Board staff involvement (including watershed assessment and monitoring plan development); an update on watershed analysis efforts (with which Regional Water Board staff will become involved); and opportunities for

collaboration on both HCP agency monitoring and for Regional Water Board monitoring. Staff forwarded on to the wildlife agencies a list of all monitoring activities we require from Pacific Lumber, with the possibility of combining some monitoring efforts. In addition, we are now beginning to receive copies of reports from the wildlife agencies' HCP compliance monitors.

Regional Water Board staff have re-engaged in the review process for the Elk River and Salmon Creek Watershed Analysis (ER/SC WA). Synthesis Review Team (SRT) drafts were circulated to the agencies for preliminary review. The SRT includes personnel from NOAA fisheries, US Fish and Wildlife Agency, California Department of Fish and Game (CDFG), California Department of Forestry and Fire Protection (CDF), California Geologic Survey (CGS), Pacific Lumber, members of the Watershed Analysis team contracted by Pacific Lumber, and representatives of the Regional Water Board staff. A synthesis meeting was held on July 30 and 31, 2003. On July 30, 2003 a presentation of each module was given in which the agency personnel could ask question of the technical staff that conducted the WA. On July 31, 2003, the summary of the WA team findings was presented. Regional Water Board staff were unable to attend the second day of these synthesis meetings. However, staff plans to continue to be involved in the WA and prescription process.

Currently, staff are working to develop written comments to present to the synthesis team for consideration and inclusion into the WA. Modules included in WA include: Watershed Overview, Mass Wasting, Surface Erosion/Sediment Budget, Riparian Function, Stream Channel, Fisheries, and an Amphibian and Reptile Assessments. Staff remains concerned that flooding and water quality assessments with respect to Basin Plan Objectives has not been included in the WA, and will work to have these issues addressed.

Recent Developments

In late July, Judge John J. Golden of the Superior Court Of California, County Of Humboldt issued a final ruling in the case of *EPIC and Sierra Club vs. California Department of Forestry and Fire Protection; California Department Of Fish And Game, et al. and Pacific Lumber Company; Scotia Pacific Company, LLC; And Salmon Creek Corp.* He stated that the timber management plan was "fatally flawed in its format, content and processing", and that the state erred in drafting Pacific Lumber's logging guidelines. In addition, Fish and Game's 1603 permit and the Fish & Wildlife Incidental Take Permit had "serious and substantial defects" and were invalidated as well.

TMDL Activities

The Phase II Report authored by the Humboldt Watersheds Independent Review Panel will be presented to the Regional Water Board at a workshop to be held on August 26, 2003 in the Regional Water Board's hearing room in Santa Rosa. Several of the Panelist and staff from CONCUR, Inc. will be present to present an overview and key findings from the Phase II report to the Regional Water Board. See Executive Officer's Summary Report for August 26, 2003, Item 3 for more background information relative to the workshop.

Development of the Total Maximum Daily Loads (TMDLs) for Freshwater Creek and Elk River are proceeding. Regional Water Board staff collected bulk sediment samples in both Freshwater Creek and the Elk River in June 2003. Samples are being analyzed at an EPA-certified lab. Results will be used, along with existing data, in developing instream and hillslope targets for use in the TMDLs. Regional Water Board staff worked with representatives from Pacific Lumber Company, Simpson Resource Company, and the Bureau of Land Management, when collecting samples on their respective properties. Regional Water Board staff reported that a

Item 16 -5-

good working relationship was evident between all parties, despite working in wet and cold conditions. Additional field work is planned for September to collect data needed to analysis other instream parameters, such as macroinvertebrates, V^* (residual pool filling), and D_{50} .(pebble count)

Contracts crucial to the development of the TMDLs are still being processed in Sacramento. The contract processing timeframe has been significantly lengthened due to changes in contract procedures, staffing constraints at the State Water Board, and other high priority contracts already in the process. The Light Detection and Range (LIDAR) contact should hopefully be ready to send out to bid by the end of August. This contract is time sensitive as the LIDAR flight needs to occur prior to the onset of the foggy and cloudy season in Humboldt County. The sediment source contract is also proceeding, although the LIDAR data is required before the sediment contract can fully executed.

Fall and winter 2002-2003 instream monitoring data collected has been submitted by Simpson Resource Company. Instream data from Pacific Lumber Company has been submitted in its raw format, but a final version has not yet been submitted to this office due to Regional Water Board staff's need to finish review of the Quality Assurance Quality Control Plans (QA/QC). Analysis of the data will occur following the field season and will be used in part for the development of sub-basin sediment loads.

In summary, the Regional Board staff continues to make progress in administering the Board's directives and actions. We look forward to reporting on additional progress at our next update, which currently is scheduled for January 2004.

PRELIMINARY STAFF RECOMMENDATION:

No formal Regional Water Board action is legally required for this item, but the Board may provide guidance on work efforts in the five watersheds.

(Update on 5 watersheds.doc)